

QUANTITY PURCHASE AGREEMENT BETWEEN STATE OF INDIANA AND MICROVOTE GENERAL CORPORATION

This Quantity Purchase Agreement (“Agreement”) is made by and between the Indiana Election Division and Indiana Secretary of State through the Indiana Department of Administration (“Department”) for the benefit of all counties in the State of Indiana (political subdivisions) and MicroVote General Corporation (“MicroVote”).

RECITALS

WHEREAS, Indiana statute establishes an Election Administration Assistance Fund (“EAAF”) pursuant to IC 3-11-6.5 from which counties may seek reimbursement for the purchase, lease-purchase or lease of voting systems;

WHEREAS, the Department may award quantity purchase agreements to vendors to establish the maximum price at which voting systems will be offered for sale and sold to counties;

WHEREAS, the Department entered into contract negotiations with MICROVOTE as a special procurement after requesting and evaluating a proposal from MICROVOTE;

NOW, THEREFORE, for the mutual promises contained herein, the parties agree:

AGREEMENT

1. TERM

This contract shall be for a period of one year. It shall commence on execution of this contract and shall terminate no later than one year after the date of execution of this contract.

2. PRICES

MicroVote shall provide to counties in Indiana the voting system identified in this Agreement, including any of the products and services associated with the MicroVote’s voting system identified in this Agreement, at a price no more than the price stated herein. If MicroVote provides for the payment of installments over time, the terms for payment may not provide for the payment of interest on the installments during a period of time beginning with the execution of MicroVote’s contract with county or counties and ending when the county receives, or all the counties in a multi-county agreement receive, a final reimbursement payment from the EAAF. The purpose of this provision is to prevent the payment of interest by a county due to a delay in reimbursement to a county or counties from the EAAF.

3. PRODUCT DESCRIPTION AND PRICING TABLES

PRODUCT DESCRIPTIONS

MicroVote shall provide the following described voting system products and services to Indiana counties at a price no more than the price stated below:

Introduction:

MicroVote offers the MicroVote Infinity® Voting System which utilizes a Direct Record Electronic (DRE) voting device. The MicroVote Infinity Direct Electronic Voting System, Model VP-1, Firmware Version 2.04 was certified for marketing and sale in Indiana on February 28, 2002. (The Indiana certification for the marketing, sale, or lease of this voting system ("the Infinity") expires October 1, 2005 under Public Law 14-2004, SECTION 200(g). However, MicroVote may apply to renew the certification of this voting system prior to October 1, 2005.)

The Infinity also includes an optical scan balloting system that can be used in conjunction with the DRE voting device for tabulating absentee ballots at a central location pursuant to IC 3-11.5.

Software and Firmware Included in this Agreement or Added to this Agreement:

This Agreement will be deemed to include more recent versions of any firmware or software product identified herein provided that all of the following conditions are met:

1. The more recent version of firmware or software receives Commission approval.
2. The more recent version of firmware or software is offered to new customers at a price no more than the price stated for the current version of the firmware or software in this Agreement and is provided to customers who have previously purchased the Infinity at no additional cost as part of the annual software maintenance fee as set forth in the pricing tables herein which shall include installation and training services.
3. The Indiana Election Division and Indiana Secretary of State file a written consent to include the more recent versions of any firmware or software product as part of this Agreement.

MicroVote currently has Indiana customers using a prior system sold by MicroVote, the MicroVote MV 464. The Indiana certification for the hardware and firmware for this voting system expires October 1, 2005 and the Indiana certification for the software for this system, the MEMS version 7.5, expired September 30, 2002. The hardware, firmware and software used by the MicroVote MV 464 is no longer marketed by MicroVote. However, MicroVote acknowledges its intent to apply to the Indiana Election Commission for certification of a software upgrade to the Infinity which would include a module to allow a county to read all electronic data results into the same software program. MicroVote acknowledges that this product would not alter the hardware,

firmware or software currently certified for use in Indiana on the MV464 voting system. Provided that this Infinity software upgrade meets the conditions stated in paragraphs 1, 2 and 3 above, MicroVote shall provide this upgrade to all Indiana customers who purchased the Infinity voting system and currently use the MV 464 voting system without additional charge as part of the fees for the annual maintenance fee for the Infinity as set forth in the pricing tables herein which shall include installation and training services.

A. HARDWARE DESCRIPTION:

Infinity Voting Panel

The MicroVote Infinity® Voting System consists of two sub-systems: 1) the Infinity Voting Panel, a DRE voting system that utilizes that incorporates a Liquid Crystal Display (“LCD”) panel to display the ballot and features individual buttons for operator control and vote selection (“Infinity Voting Panel”); and 2) the Infinity Election Management System (EMS), the software that provides vote tabulation and election management functions. The Infinity Voting Panel is designed for portable stand-alone voting operation with no need for additional devices at the polling site.

The Infinity Voting Panel has the following technical specifications:

Size: 16¼ in. wide X 13 in. high X 2½ in. deep, settable to 15° slope
Weight: 4¾ Lbs. Voting Panel only, 5¾ Lbs. with batteries, 6 Lbs. with power supply & cord
Operating Temp: 40° to 100° Fahrenheit
Storage Temp: -15° to 140° Fahrenheit
Humidity: 95% RH max, non-condensing
Power Input: Standard ¼” miniature power jack, 12VDC ± 10% @ 2.5A max. Internal 3v lithium battery for configuration retention and real-time clock.
Battery Power: (8) ‘C’ cell alkaline batteries stored in rear-accessible battery compartment.

The Infinity Voting Panel will plug into and operate off of a standard 120v alternating current (AC) power outlet. In addition, the Infinity Voting Panel will operate for up to 6 hours under battery power, providing protection from AC power loss. When the Infinity Voting Panel is connected to AC the batteries supply no current. If AC power is lost the batteries automatically supply power with no interruption to the current Infinity Voting Panel function. The Infinity Voting Panel requires Eight (8) Alkaline “C” cell batteries which are stored in a compartment in the back of the Infinity Voting Panel. Weighing only six (6) pounds, the panel can be placed in the lap of a wheelchair-confined voter. Batteries can be replaced if necessary during the election without loss of data. In case of power loss while the voter is making selections, the Infinity Voting Panel will restart and the voter’s selections will be erased. The Infinity Voting Panel will then display ‘POWER FAILURE until the top right selector button is pressed. After a power interruption, the Infinity Voting Panel will have to be re-activated for the voter to permit

the voter to cast a ballot. The Status Display feature will verify the public counts if necessary.

The Infinity Voting Panel is programmed using a personal computer (“PC”) that operates a proprietary database program provided by MicroVote and connects to the Infinity Voting Panel via an interface connector.

The Infinity voting system uses three types of smart cards. One smart card, called the “start card,” is used in the morning when opening the polls to prepare the system for receiving a vote. Another smart card is a “removable voting device activation card” that is used to activate the Infinity Voting Panel for each voter. This removable voting device activation card carries programmed date and precinct information so it can only be used in a specific precinct on a specific election date. The “tally card” is the smart card used to close the panel to further voting at the polls and to transport results from the panel to the central tabulation computer. All smart cards are erasable and reusable.

The Infinity voting system also uses a “GemPlus Reader” to transfer information to and from smart cards. First the GemPlus Reader is used to program election specific information to the smart cards that activate the voting panel for each voter. Second, the GemPlus Reader is used to transfer votes from the tally card to the central tabulation computer. Precinct election officials download election results to the tally card from the Infinity panel. The tally card is then sealed in an envelope and returned to the county election board where it is inserted into the GemPlus Reader and the results are assigned to the proper precinct in the database.

The Infinity Voting Panel has various accessibility features. First, the Infinity Voting Panel is capable of presenting a ballot in three different languages: Spanish, English, and French. The voter’s language option may be selected in secret once the voter has entered the voting booth. Second, the Infinity Voting Panel is capable of providing an audio ballot so that voters with visual impairments may vote independently. This feature presents the ballot in audio format by means of a program that converts text to speech. If the voter selects the audio ballot the voter may adjust the volume control for the voice-activated ballot. When a voter who has adjusted the volume is finished voting, the system has an automatic reset feature to return the voice-activated ballot to the default setting. Third, the visually-impaired voter also has the option to adjust the size of the ballot text (font) up to 100% (26pt.) of the normal ballot text. Finally, the fact that the Infinity Voting Panel may be operated on batteries enhances its flexibility and portability in ways that may assist voters who are physically challenged.

Like other DRE voting systems, the Infinity Voting Panel will not permit a voter to over vote. In addition, prior to casting a ballot, the voter will be prompted to review the entire ballot to ensure all selections are correct. Upon casting the vote, the Infinity Panel will emit both audio and visual confirmation (bell chime and “Thank You” displayed). Upon pressing the cast vote button on the Infinity Voting Panel, the voter’s vote will be sent to two independent “flash memories” for redundant memory storage.

The vote tally results can be extracted from the Infinity Voting Panel by using one of two distinct methods. One method of extracting tally results from the Infinity Voting Panel utilizes a Smart Card to extract tally files that may then be transported to a central location. The tally data transported via Smart Card is encrypted. Another method of extracting tally results from the Infinity Voting Panel is by connecting the Infinity Voting Panel directly into the host computer via a serial cable connection.

Absentee Voting Optical Scan Hardware

The absentee voting system is an optical scan voting system. A standard seven (7) inch optical scan ballot, including a ballot guide, may be generated on demand from the same administrative database utilized for programming the Infinity Voting Panel using a standard office laser printer. MicroVote sells the HP Laser Jet-M5200 for this purpose. The ballot cards are read by a ballot Chatsworth Card Reader model OMR 9002. The vote tally from this optical scan reader is merged into the same Vote Tally module used to tally results for the Infinity Voting Panel.

B. ELECTION MANAGEMENT SOFTWARE (EMS) / LICENSES :

The Infinity Election Management Software (EMS) program, Version 2.04, contains five modules: Installation Manager, Election Manager, Ballot Loader, Vote Tally and Report Distribution. These modules integrate general administrative, pre-election, Election Day and post-election functions.

The Installation Manager maintains definitions of political subdivisions, precinct definition, overlays and district definition and political party identification.

The Election Manager allows the user to create newly defined elections utilizing ballot template data thus generating specific ballot sequence and applying the ballots to the appropriate district, precinct and polling location. This function automatically generates all designated ballots for both the DRE devices and absentee ballot guides for mail balloting. The Election Manager permits the user to develop ballots. It contains both the previously described text-to-speech applications and multiple language functionality.

The Election Manager is the source for system security and auditing functions. The system administrator can produce event audit log reports at any given point in the election process to monitor the status of the voting system.

The Election Manager also allows election simulation for the purpose of logic and accuracy testing, election night tally sequences, report distribution, and media display and Internet connectivity.

The Vote Tally module permits data to be transferred into EMS via Smartcard or interface connector upon issue by EMS of the appropriate Tally Transfer command while the Voting Panel is in the Talled mode. A command parameter is set to transfer both vote totals and write-in entries in summary format or full vote detail containing

individual vote selections and write-in entries (audit trail). A full vote detail transfer is required to reset the Voting Panel to prevent accidental loss of data.

The Report Distribution (RD) module can import data into a Microsoft® Access Database (mdb), while securing the primary tally files, and provide eleven (11) different reports. A cumulative, real-time collection of tally results will provide specific data as to the total number of precincts reported, the number of un-reported precincts, the percentage of registered voters casting ballots (turnout), a separation of vote type, the office detail reports by precinct, and under-vote reports. These reports can be configured by countywide or precinct level summaries or detailed reports by political subdivisions, districts or at-large candidate filing.

In addition, Election results can be uploaded to the county website for continuous results posting via HTML format. An ASCII file is generated to permit exportation of election data. Only authorized personnel designated by the system administrator can create these mdb. files for the purpose of exporting into this format to allow complete flexibility of reporting methods with this secure, resident data.

C. ELECTION TRAINING AND SUPPORT:

MicroVote will offer the full range of services, from customer analysis through implementation, training, testing, acceptance and ongoing support.

MicroVote offers an Installation Acceptance Plan (IAP) that outlines the types of customer tests to be carried out, the features to be tested, pass and fail criteria, staffing matters and responsibilities, and provides a preliminary schedule for the installation, training and acceptance testing. Testing is performed to verify that the system has been properly installed and is fully operational. MicroVote will provide a Project Management Team consisting of a minimum of five personnel per contract agreement. The Project Management Team is entrusted with the day-to-day coordination and responsibility of the project to ensure that project goals, requirements, deliverables and timelines are met.

Using a phased approach, the installation services are delivered in manageable sections that coincide with customer time requirements. As part of these installation services, MicroVote will demonstrate to a customer that the products sold hereunder will perform as documented in MicroVote reference manuals. MicroVote guarantees that the required hardware system it designated for purchase by the customer and installed with EMS software applications is suitable for the intended purpose and operates in full compliance with applicable federal and Indiana election laws.

Acceptance Testing shall not begin until the complete Infinity Voting System has been delivered and all hardware components and EMS software applications have been installed. The customer's Acceptance Test shall consist of operating the equipment in conformance with MicroVote's performance specifications and shall end with the successful operation of the equipment by the customer.

MicroVote shall provide on-site support and training through a period of 2 statewide elections and train those persons selected by the customer. This training shall be limited to instruction in the mechanics of the functions of the voting system and shall not include any legal or policy advice relating to the conduct of elections in general. The following fees shall apply on an as requested basis beyond the contract period.

PRICING TABLES FOR EQUIPMENT AND SERVICES

The product and service descriptions relate directly to the corresponding line items provided in the pricing table shown below.

UNIT PRICING

PRECINCTS VOTING PACKAGE

(All system components required for presenting ballots to voters, capturing cast ballots, precinct-level tabulation and precinct-level election result reporting)

Item Name/Description	Unit Price- For Initial Quantity Purchase	Unit Price- For Additional Purchases	Product Model Number
Infinity Voting Panel device for standard voting and voting booth	\$3150	\$3150	Infinity VP-1 Revision C Firmware Version 2.04
Infinity Voting Panel Device for voters with disabilities and voting booth	\$3420	\$3420	Infinity VP-1 Revision C/Double Talk Firmware Version 2.04
Smart Card- Start Card	\$7	\$7	
Smart Card- Removable Voting Device Activation Media	\$7	\$7	
Smart Card- Storage/Transport Media	\$15	\$15	MPEMV128 #95767
Paper Ballot Printer	\$250	\$250	DPU-414-30B
Precinct Storage/Transportation Bag	\$58	\$58	
Set of User Documentation for All Components- 1 set per precinct in both paper and electronic form	No cost	\$25	
Set of Maintenance Documentation- 1 set per precinct in both paper and electronic form	No Cost	\$25	

Set of Voter Operational Documentation- 1 set per precinct in both paper and electronic form	No Cost	\$25	MS 2000 Professional
Software components and related documentation for Voting Device application and OEM operating system for voting device	No Cost	N/A	
Voting Device Host application OEM operating system for VSH	No Cost	N/A	
Set of User Documentation for all components- 1 set per precinct in both paper and electronic form	No Cost	\$25	
Set of Maintenance Documentation for all components- 1 set per precinct in both paper and electronic form	No Cost	\$25	

Election Management Package

(All system components required for ballot preparation, ballot distribution, county level vote tabulation and county level election result reporting)

Item Name/Description	Unit Price- For Initial Quantity Purchase	Unit Price- For Additional Purchases	Product Model Number
PC to run Election Management System (EMS)	\$2200	\$2200	Dell Workstation
Ballot Printer for Absentee Balloting System (ABS)	\$1500	\$1500	HP Laser Jet – M5200
Ballot Scanner- Normal Speed- for ABS	\$2200	\$2200	Chatsworth Model OMR 9002
Uninterruptible Power Supply (UPS)	\$150	\$150	ES350
Smartcard Reader	\$37	\$37	Gems Plus Reader GCR410
Set of User Documentation for all components- 1 set for each county provided	No cost	\$25	

in both paper and electronic form			
Set of User Documentation for Voting Devices- 1 set for each voting device provided in both paper and electronic form	No cost	\$25	
Set of Election Day Troubleshooting Documentation- 1 set for each precinct each set in both paper and electronic form	No Cost	\$25	
Software components and related documentation OEM operating system for EMS	No Cost		Microsoft 2000 Professional
3 RD - party database for EMS	No Cost		Microsoft SQL Server 7
3 rd -party reporting software for EMS			
EMS software application- ballot preparation, vote tally and reporting	\$33,000	\$33,000	EMS v2.04
Set of User Documentation for EMS software- 1 set for each county in paper and electronic form and 4 sets for SEC in both electronic and paper form	No Cost	\$25	

PROJECT SERVICES PACKAGE

Item Name/Description	Unit Price or Rate- For Initial project service	Unit Price or Rate- For extended service	Rate Basis
Project Management	Included in system purchase price	\$3000	(Assumed to be yearly unless otherwise specified)
On-Site Installation	Included in system	N/A	N/A

and Readiness Testing	purchase price		
On-Site Training: Training class in set-up and operation of EMS, Voting Stations and related Components	Included in purchase price	\$1000	Assumed to be daily unless otherwise specified
On-Site Training: Training class in the maintenance of EMS, Voting Stations and related components	Included in system purchase price	\$1000	Assumed to be daily unless otherwise specified
On-Site Technical Support	Included in system purchase price	\$2000	Assumed to be Daily unless otherwise specified
Remote Technical Support	Included in system purchase price	No Cost	Assumed to be Yearly unless otherwise specified
Software Maintenance	First year included in system purchase price	\$5500	Annul fee commences one year from contract execution

ELECTION TRAINING AND SUPPORT
(On-site support and training following the contract period of 2 statewide elections)

Order Number	Description	Price
500100	Election Day Support	\$2000 per day
500110	Voting Machine Setup	\$75 per machine
500120	Voting Machine Setup Supervision	\$1000 per day
600110	Voting Machine Technical Training	\$1000 per day
600100	IEMS Software Training	\$1000 per day
600130	MEMS Software Training	\$1000 per day
600120	Poll worker Training	\$1000 per day
700100	Ballot Design	Call for details

4. ADDITIONAL TERMS AND AGREEMENTS

Product Compliance with Indiana Statutes and Notice of Decertification or Judgment

Voting system equipment provided by MicroVote under a contract with a county or counties pursuant to this quantity purchase agreement must be certified by the Indiana Election Commission for use in Indiana elections pursuant to IC 3, and shall be as described in the response to request for proposals of MICROVOTE which is incorporated by reference and made a part hereof.

In addition, any contract between MicroVote and a county or counties pursuant to this quantity purchase agreement voting system must describe the voting system with particularity, including a description of the hardware, firmware, and software versions of the voting system. Further, prior to the execution of a contract with a county or counties pursuant to this quantity purchase agreement, MicroVote shall be required to submit an affidavit, under oath, attesting to the fact that the voting system identified in the proposed contract has been certified by the Indiana Election Commission for use in Indiana elections pursuant to IC 3. The affidavit must include a copy of the proposed contract with the county.

Furthermore, any contract between MicroVote and a county or counties pursuant to this quantity purchase agreement must provide that MicroVote shall provide written notice to the county or counties and to the Indiana election division within seven days of the occurrence of either of the two events:

1. A voting system marketed or sold, or formerly marketed or sold by MicroVote has been decertified in any jurisdiction in the United States. The notice shall identify the voting system subject to the decertification, the jurisdiction that decertified the voting system, the reason for the decertification, and the date of decertification.
2. MicroVote has a judgment entered against it for violating a contractual obligation owed to a customer involving its products or services. The notice shall identify the name, address and phone number of the customer and include a copy of the judgment.

County Contracts

All counties who purchase products listed herein from MicroVote shall assume all payment obligations, and any and all other contractual obligations, to MicroVote under separate agreement between MicroVote and the county. The Department assumes no obligation to pay for any of the product(s) purchased by any county pursuant to this Agreement or otherwise. MicroVote shall have no interest, claim or cause of action under this Agreement in its own right, or as a third-party beneficiary under a contract with a county, against the State of Indiana or any of its departments, divisions, subdivisions, officials, representatives or employees, for payment of any funds from the EAAF established under IC 3-11-6.5 or from any other state fund.

Nothing in this Agreement precludes a county from entering into a multi-county purchasing agreement with another county, or other counties, to purchase voting equipment from MicroVote, or from financing. Furthermore, nothing in this Agreement precludes a county or counties from financing a purchase from MicroVote through the Indiana Bond Bank.

Necessary Approvals

This Agreement is subject to the approval of the signatories hereto, the appropriation and availability of funds, and compliance with Indiana Law.

Assignment

MicroVote shall not assign or subcontract the whole or any part of this Agreement without the Department's prior written consent.

Successors and Assignees

MicroVote binds its successors, executors, administrators, and assignees to all covenants of this Agreement. Except as above set forth, MicroVote shall not assign, sublet or transfer interest in this Agreement without the prior written consent of the Department.

Authority to Bind

The signatory to this Agreement for MicroVote represents that he/she has been duly authorized to execute contracts on behalf of MicroVote designated above and has obtained all necessary or applicable approval from the home office of MICROVOTE to make this Agreement fully binding upon MicroVote when his/ her signature is affixed and is not subject to home office acceptance when accepted by the Department and executed by the signatories to this Agreement.

Compliance with Laws

MicroVote agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the Department and MicroVote to determine whether the provisions of this Agreement require formal modification. No modifications to this Agreement shall be valid unless made in writing and signed by duly authorized representatives of both the Department and MicroVote.

Conflict of Interest

A. As used in this section:

“Immediate family” means the spouse and the unemancipated children of an individual.

“Interested party” means:

1. The individual executing this Agreement;
2. An individual who has an interest of three percent (3%) or more of MicroVote, or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

“Department” means the Indiana Department of Administration.
“Commission” means the State Ethics Commission.

- B. The Department may cancel this Agreement without recourse by MICROVOTE if any interested party is an employee of the State of Indiana.
- C. The Department will not exercise its right of cancellation under section B above if MicroVote gives the Department an opinion by the Commission indicating that the existence of this Agreement and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of this Agreement consistent with an opinion of the Commission obtained under this section.
- D. MicroVote has an affirmative obligation under this Agreement to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that MicroVote knows or reasonably could know.

Debarment and Suspension

MicroVote certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or department, agency or political subdivision of the State of Indiana. The term “principal” for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of MicroVote.

Disputes

Should any disputes arise between the parties to this Agreement with respect to this Agreement, MicroVote and the Department agree to act immediately to resolve any disputes. Time is of the essence in the resolution of disputes.

This dispute resolution provision applies to the terms of this Agreement, including the pricing of the products and services indicated herein, and also applies to any dispute that may arise out of a contract between MicroVote and a county and does not limit any remedy a county may have under any contract with MicroVote.

MicroVote agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. If the Department and MicroVote cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to MicroVote and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and binding unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. Upon the issuance of a reconsideration, or if no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration. After completion of arbitration, or if the parties do not agree to arbitration, the dispute may be submitted to an Indiana court of competent jurisdiction.

Drug-Free Workplace Certification

MicroVote hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. MicroVote will give written notice to the Department within ten (10) days after receiving actual notice that MicroVote or an employee of MicroVote has been convicted of a criminal drug violation occurring in MicroVote workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Agreement is in excess of \$25,000.00, MicroVote hereby further agrees that this Agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by MicroVote and made a part of the contract or agreement as part of the contract documents.

MicroVote certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in MicroVote workplace and specifying the actions that will be taken against employees for violations of such prohibition;

- B. Establishing a drug-free awareness program to inform employees of (1) the dangers of drug abuse in the workplace; (2) MicroVote policy of maintaining a Drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify MicroVote of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a Drug-free workplace through the implementation of subparagraphs (A) through (E) above.

Governing Laws

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

Independent Contractor Status

Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

MicroVote shall be responsible for providing all necessary unemployment and workers' compensation insurance for MicroVote's employees.

Funding

MicroVote shall have no interest, claim or cause of action under this Agreement in its own right, or as a third-party beneficiary under a contract with a county, against the State of Indiana or any of its departments, divisions, subdivisions, officials, representatives or employees, for payment of any funds from the EAAF established under IC 3-11-6.5 or any other state fund. The EAAF established under IC 3-11-6.5 is established to reimburse a county pursuant to the statutory provisions outlined in IC 3-11-6.5 and any other applicable statutory and administrative procedure authorized by law.

Nondiscrimination

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, MicroVote and its subcontractor shall not discriminate against any employee or applicant for employment in the performance of this Agreement. MicroVote shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this Agreement also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

MicroVote understands that the State is a recipient of federal funds. Pursuant to that understanding, MicroVote and its subcontractor if any, agree that if MICROVOTE employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, MicroVote will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. MicroVote shall comply with Section 202 or Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of contract.

Notice to Parties

Whenever any notice, statement or other communication shall be sent to the State or MicroVote, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

J. Bradley King and Kristi Robertson
Co-Directors, Indiana Election Division
Indiana Government Center South
302 West Washington Street, E 204
Indianapolis, Indiana 46204
Ph. 317.232.3939/Fax: 317.233.6793

Indiana Secretary of State Todd Rokita
201 State House
200 West Washington Street
Indianapolis, IN 46204
317.232.6531

B. Notices to MicroVote shall be sent to:

James M. Ries
6366 Guilford Avenue
Indianapolis, Indiana 46220-1750
Ph. 317.257.4900/FAX 317.254.3269

Order of Precedence

Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (a) This Agreement, (b) The RFP; and (c) MicroVote's Response to the RFP.

Payments

All counties who purchase products listed herein from MicroVote shall assume all payment obligations, and any and all other contractual obligations, to MicroVote under separate agreement between MicroVote and the county. The Department assumes no obligation to pay for any of the product(s) purchased by any county pursuant to this Agreement or otherwise.

Penalties/Interest/Attorney's Fees

The Department will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 et seq., IC 34-54-8-5, and IC 34-13-1-6.

Renewal Option

This Agreement may be renewed under the same terms and conditions subject to the written approval of MicroVote as well as the written approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract. Any subsequent renewal to this Agreement may include an increase in the prices quoted in this Agreement in an amount not to exceed 5%.

Taxes

The Department, as a Department of the State of Indiana, is exempt from state, federal, and local taxes and the Department shall provide proof of such exemption to MicroVote upon request. The Department will not be responsible for any taxes levied on MicroVote as a result of this Agreement.

Termination for Default

With the provision of thirty (30) days notice to MicroVote, the State may terminate this Agreement in whole or in part, if MicroVote **fails to** correct or cure any breach of this Agreement. The remedy contained in this clause shall be in addition to any other remedy specified in this Agreement or otherwise provided by law.

Nothing contained in this clause shall be construed to limit the rights and remedies of a county under a contract with MicroVote.

Ethics Clause

MicroVote and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If MicroVote is not familiar with these ethical requirements, MicroVote should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<[<http://www.in.gov/ethics/>>>](http://www.in.gov/ethics/)>>>. If MicroVote or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to MicroVote. In addition, MicroVote may be subject to penalties under Indiana Code § 4-2-6-12.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of the Agreement.

The rest of this page has been left blank intentionally.

In Witness Whereof, MicroVote and the State of Indiana have, through duly authorized representatives, entered into this Agreement. The parties having read and understand the foregoing terms of this Agreement do by their respective signatures dated below hereby agree to the terms thereof.

MicroVote General Corporation:

(Where Applicable)

By: _____
Printed Name: _____
Title: _____
Date: _____

Attested By: _____

Indiana Election Division:

Indiana Secretary of State

By: _____
Printed Name: J Bradley King
Title: Co-Director, Indiana Election Division
Date: _____

Printed Name: Todd Rokita
Date: _____

By: _____
Printed Name: Kristi Robertson
Title: Co-Director, Indiana Election Division
Date: _____

**Information Technology Oversight
Commission**

Department of Administration

By: _____
Printed Name: _____
Title: _____
Date: _____

Earl Goode
Commissioner
Date: _____

State Budget Agency

Office of the Attorney General

Chuck Schalliol
Director
Date: _____

Stephen Carter
Attorney General
Date: _____